

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification)	CC Docket No. 96-128
and Compensation Provisions of)	
The Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Clarification)	

COMMENTS OF WORLDCOM, INC.

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**Larry Fenster
1133 19th St., NW
Washington, D.C. 20036
202-736-6513**

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I. EXECUTIVE SUMMARY

In its October 3, 2003 *Data Reliability Order*, the Commission rejected the rules adopted in its *Second Reconsideration Order*. It found that only switch-based resellers (“SBRs”) have the ability to track calls passed to them; that Intermediate Carriers are not able to determine whether calls passed to SBRs are completed; and that Intermediate Carriers do not exercise any particular leverage over their SBR customers that would enable them to negotiate contracts to obtain timely and reliable compensation data. The inability to negotiate such contracts resulted in Intermediate Carriers having no choice but to compensate payphone service providers (“PSPs”) for all calls sent to SBRs when they did not receive SBR call completion data, and they were either unable to be compensated for this overpayment from their SBRs or had to engage in lengthy and complicated true-up procedures. The Commission concluded that involuntary and un-reimbursed over-compensation was not a fair compensation regime as required by Section 276, and was contradicted by its own, and the D.C. Circuit’s, finding that carriers should not be responsible for the payphone compensation failures of third parties.

The Commission therefore adopted new rules that remedied the problems identified with its first payphone compensation regime. It made clear that payphone compensation liability unconditionally lay upon carriers that complete coinless payphone calls from a switch they either own or lease. It adopted requirements ensuring PSPs would know the identity of SBRs and be able to gauge the number of calls for which an SBR might be responsible. The Commission also gave SBRs incentives to directly compensate PSPs by undergoing an audit verifying the accuracy of their payphone compensation systems. The Commission also took comprehensive steps to establish and maintain the reliability of payphone compensation tracking systems, reports, and payments. Finally, the Commission prohibited SBRs who do not undergo audits

verifying the accuracy of their per-call compensation systems to compensate PSPs based on their per-call completion data. Instead, the Commission required them to negotiate payments based on other mechanisms acceptable to PSPs.

In their Petitions for Reconsideration, PSPs claim that unverified SBRs will not identify themselves as being responsible for payphone compensation, and will not negotiate other compensation arrangements. AT&T asks the Commission to clarify that if an Intermediate Carrier acts as a conduit between SBRs and PSPs, and compensates PSPs on the basis of all calls sent to a consenting SBR's platform, such an arrangement would constitute fair compensation to PSPs and from SBRs. Explicit PSP approval would not be required under these circumstances. MCI supports AT&T's request. By so clarifying, the Commission would remove the need for SBRs who have not undergone independent system attestations to negotiate other payment arrangements with each PSP. This would improve the administrative efficiency of the existing regime, and remove the primary reason PSPs believe the current regime will result in their being under-compensated.

The RBOC Payphone Coalition ("RPC") and the American Public Communications Council ("APCC") ask the Commission to clarify that in the event an SBR does not comply with the data verification requirements, compensation liability reverts to Intermediate Carriers. Both argue that this conclusion follows from the amended rules, which state, "[a]s a precondition to tendering payment pursuant to Section 64.1310 all Completing Carriers must undergo a system audit." However, Section 1320(a) applies to all Completing Carriers, not just SBRs. If the Commission were to affirm RPC and APCC's interpretation, all Completing Carriers could purposely decline to undergo system attestations and PSPs would not receive any compensation.

The Commission should also reject PSPs' invitation to make SBR liability contingent on passing

an audit and have payphone compensation liability default to the Intermediate Carrier. Doing so would remove incentives for SBRs to develop reliable tracking systems.

The Commission should clarify that Completing Carriers must report only completed calls, as requested by AT&T. Without this clarification, PSPs might read section 64.1310(a)(4)(i) as requiring Completing Carriers to provide them a list of all toll-free and access numbers dialed from payphones, even if calls dialed to those numbers were not completed, and even though Section 64.1310(a)(4)(ii) subsequently makes clear that the Commission intended Completing Carriers to only report the volume of completed calls. APCC does, in fact, request the Commission require Completing Carriers to provide PSPs incomplete call data on the grounds that this would allow PSPs to independently verify the accuracy of Completing Carriers payphone compensation systems. The Commission should reject APCC's request, as it is premised on the assumption that an independent auditor's verification would not be accurate.

The Commission should also grant Sprint's request to clarify that any responsible corporate officer may certify the accuracy of payphone compensation payments. The penalties applicable to a false certification would be the same whether the certification were supplied by a corporate officer or the chief financial officer.

MCI opposes APCC's request for the Commission to require a uniform format to report call data to PSPs as being unnecessarily restrictive. Currently, major carriers rely on data formats used by several clearinghouses. These formats are reasonably consistent, but not identical, to each other. Formats reasonably consistent with those used by the major clearinghouses should provide sufficient uniformity to PSPs.

MCI opposes APCC's request to extend the data storage requirements from 18 months to 27 months. Under current rules local exchange carriers ("LECs") are required to maintain their verification data to help resolve disputes for 18 months from the close of a compensation period. Intermediate and Compensating Carriers should not be required to retain their verification data longer than LECs.

Similarly, the Commission should not adopt APCC's request to require beginning time, ending time, and call duration as part of the requirement to maintain call verification data. Once again APCC's request is premised on the assumption that an independent auditor's verification will not be accurate. The Commission should reject this request.

WorldCom, Inc., d/b/a/ MCI., hereby submits its opposition to comments to the Petitions for Reconsideration filed by American Public Communications Council (“APCC”) and the RBOC Payphone Coalition (“RPC”), and support for Petitions for Reconsideration filed by AT&T and Sprint.¹

II. INTRODUCTION

In its *First Payphone Order*, the Commission adopted a “carrier-pays” system because it placed the compensation responsibility on the primary economic beneficiary of coinless payphone calls.² The Commission adopted this approach from its pre-1996, payphone compensation regime. In its *Access Code Compensation Order* the Commission justified a carrier-pays system because it placed administrative responsibility on “...entities that *directly* benefit from access code calls (emphasis added).”³ Placing compensation liability on the party that is the direct beneficiary closely tracks actual marketplace practice where the party offering the service to end-users is responsible for compensating its input suppliers. Placed in this light, making an input supplier such as an Intermediate Carrier responsible for a switch-based reseller’s (SBRs’)⁴ dial around compensation payment to another input supplier, in this case the payphone service provider (“PSP”), makes as much sense as making PSPs responsible for

¹ See Petition of the American Public Communications Council for Clarification or Partial Reconsideration (*APCC Petition*), RBOC Payphone Coalition’s Petition for Reconsideration and Clarification (*RPC Petition*), AT&T Petition for Clarification or, In the Alternative, Reconsideration (*AT&T Petition*), Sprint Corporation’s Petition for Reconsideration, (*Sprint Petition*), CC Docket No. 96-128, File No. NSD-L-99-34, filed December 8, 2003.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, (*First Payphone Order*) CC Docket No. 96-128, 11 FCC Rcd 20541 (1996), ¶ 83.

³ In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation Second Report and Order, (*Access Code Compensation Proceeding*), 7 FCC Rcd 3251, CC Docket No. 91-35, & 42.

⁴ MCI will refer to SBRs as “Completing Carriers” who have received calls from an Intermediate Carrier.

compensating Intermediate Carriers for the provision of long distance service to SBRs out of payments they receive from SBRs for using their payphones to provide dial around service.

The Commission exempted pure resellers from compensation responsibility, even though they were the primary, direct, economic beneficiaries of dial around service, not because of a marginal gain in administrative efficiency, but because pure resellers' lack of switching capability would make it impossible for them to track completed calls and as a result would create a "regulatory nightmare" involving excessive network upgrades and transaction costs."⁵ In its *First Reconsideration Order*, when the Commission clarified that SBRs were responsible for compensation and tracking, it confirmed both that SBRs were the direct, primary, beneficiary of dial around calls, and the carrier capable of tracking a call to completion. For both these reasons SBRs were responsible for dial around compensation.⁶

The Commission shifted compensation and tracking responsibility from SBRs to what the Commission now refers to as Intermediate Carriers in its *Second Reconsideration Order*.⁷ The Commission offered four reasons for this change in policy. First, the Commission concluded that PSPs had not received sufficient information from Intermediate Carriers to allow them to identify the SBR responsible for compensation, or to evaluate the number of calls for which an

⁵ *First Payphone Order*, & 86.

⁶ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration, (*First Reconsideration Order*), CC Docket No. 96-128, 11 FCC Rcd 21233 (1996), & 92. See also, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, Third Order on Reconsideration and Order on Clarification, (*Third Reconsideration Order*) CC Docket No. 96-128, 16 FCC Rcd 20922 at &4, "The Commission also recognized that a reseller lacking its own facilities does not have the ability to track calls, and that the facilities-based carrier should therefore pay compensation to the PSP."

⁷ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Order on Reconsideration (*Second Reconsideration Order*) 16 FCC Rcd 8098 (2001).

SBR might be responsible.⁸ Second, the Commission determined that its rules did not make sufficiently clear whether Intermediate Carriers or SBRs were responsible for paying PSPs for calls completed by SBRs.⁹ Third, the Commission concluded that SBRs were unable to track payphone-identified calls to completion because Intermediate Carriers failed to pass payphone specific coding digits to them.¹⁰ Fourth, the Commission determined that Intermediate Carriers were reasonably certain to be able to track calls to completion or arrange for SBRs to provide them the data necessary to track payphone calls to completion.¹¹

In spite of shifting compensation and tracking responsibility to Intermediate Carriers, the Commission never rejected its original finding that the carrier providing the dial-around service was the primary, direct, beneficiary of the call.¹² Moreover, the Commission gave the impression in several places that it had deputized Intermediate Carriers to act as collection agents for PSPs, and had shifted SBRs payphone compensation liability to them. For example, in the *Second Reconsideration Order*, the Commission stated that it revised “...section 64.1310(b) to permit the underlying facilities-based carrier to obtain reimbursement from resellers and debit card providers for the compensation paid to PSPs for calls carried *on their account...* (emphasis added)”¹³ And, in the *Third Reconsideration Order*, in referring to its hope

⁸ *Second Reconsideration Order*, & 15.

⁹ *Id.*, & 8.

¹⁰ *Id.*, & 16.

¹¹ *Id.*, & 16.

¹² *Id.*, & 18. “This decision is consistent with the Commission’s conclusion in the First Payphone Order that the primary economic beneficiary of payphone calls should bear the cost of the call.”

¹³ *Id.*, & 21.

that SBRs would enter into direct payment relations with PSPs, the Commission stated that “...ideally *the carrier ultimately responsible* for the payment of compensation should make payments directly to the PSP (emphasis added).”¹⁴

In the *Data Reliability Order or Order*, the Commission concluded, based on the record, that the second two of the four above-mentioned assumptions on which its Second Reconsideration Order was premised, were mistaken. The Commission found that only SBRs have the ability to accurately track calls passed to them.¹⁵ The Commission also found that Intermediate Carriers were not able to determine whether calls passed to SBRs were completed, and did not exercise any particular leverage over their SBR customers that would enable them to negotiate contracts to obtain timely and reliable compensation data.¹⁶ The inability to negotiate such contracts resulted in Intermediate Carriers being required to compensate PSPs for all calls sent to SBRs when they did not receive SBR call completion data, and they were either unable to be compensated for this overpayment from their SBRs or had to engage in lengthy and complicated true-up procedures.¹⁷ The Commission concluded that involuntary and unreimbursed over-compensation was not a fair compensation regime as required by Section

¹⁴ *Third Reconsideration Order*, & 12.

¹⁵ Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, (*Data Reliability Order*), CC Docket No. 96-128, rel. October 3, 2003, errata October 23, 2003, & 20.

¹⁶ *Id.*, & 20.

¹⁷ *Id.*, & 30.

276,¹⁸ and contradicted its own, and the D.C. Circuit's, finding that carriers should not be responsible for the payphone compensation failures of third parties.¹⁹

The Commission remedied the first problem, that PSPs had not received sufficient information from Intermediate Carriers to allow them to identify the SBR or gauge the number of calls for which an SBR might be responsible, by requiring Intermediate Carriers to identify each SBR and the volume of calls sent to each SBR from each payphone for each toll-free number.²⁰ The Commission remedied the second problem, that its rules did not make sufficiently clear whether Intermediate Carriers or SBRs were responsible for paying PSPs for calls completed by SBRs, by unequivocally stating that SBRs were the primary economic beneficiary of coinless calls completed to their customers,²¹ and that every SBR is unconditionally responsible for payphone compensation associated with calls it completes from a switch it either owns or leases.²²

As a result of record evidence that established that many SBRs either had not invested in payphone compensation tracking systems or had systems of questionable accuracy and robustness, the Commission also took comprehensive steps to establish and maintain the reliability of payphone compensation tracking systems. First, it made all Completing Carriers complete an independent verification of the accuracy of their payphone compensation tracking

¹⁸ *Id.*, & 25.

¹⁹ *Id.*, & 31

²⁰ 47 C.F.R. § 64.1310(c)

²¹ *Data Reliability Order*, & 28.

²² 47 C.F.R. § 64.1300.

systems as a precondition for being able to compensate PSPs on the basis of their call completion data,²³ file this report with the Commission, deliver the report to every PSP from which it completes coinless calls,²⁴ and annually verify the continued reliability of its payphone compensation system.²⁵ Second, it required each Completing Carrier to provide the Commission and PSPs current contact information.²⁶ Third, the Commission required the chief financial officer of each verified Completing Carrier to sign a statement swearing each quarterly payment is accurate.²⁷ All other Completing Carriers would be required to compensate PSPs on some basis, agreeable to PSPs, other than their call completion data.²⁸ Finally, the Commission clarified its willingness to enforce its payphone compensation rules, and imposed substantial penalties, including revocation of a Completing Carrier's section 214 authority, in cases involving egregious violations of its payphone compensation rules.²⁹

MCI believes the Commission has substantially improved upon both of its previous payphone compensation regimes. MCI believes the minor modifications proposed by AT&T and Sprint would improve the functioning of the improved regime the Commission has established, and opposes the proposals made by the APCC and the RPC because they would either immediately return to the discredited regime established in the *Second Reconsideration Order* or

²³ 47 C.F.R. § 64.1320(a).

²⁴ 47 C.F.R. § 64.1320(b).

²⁵ 47 C.F.R. § 64.1320(f).

²⁶ 47 C.F.R. § 64.1310(a)(4)(iii); 47 C.F.R. § 64.1320(e)

²⁷ 47 C.F.R. § 64.1310(a)(3)

²⁸ *Data Reliability Order*, & 48.

would blur the clear lines of compensation responsibility the Commission has just established and create incentives that would devolve to that discredited regime.

III. THE DATA RELIABILITY ORDER SOLVED THE PROBLEMS OF THE PREVIOUS COMPENSATION REGIMES

A. The New Compensation Regime Is Substantially Different Than The First Regime

RPC portrays the *Data Reliability Order* as establishing essentially the same regulations that existed under the Commission's original compensation regime, except with more extensive reporting and certification requirements. RPC consequently argues that the new regime will fare no better than the original compensation regime.³⁰ However, the new extensive reporting and certification requirements specifically address each of the problems identified by PSPs as being responsible for their inability to be fairly compensated under the first regime.

APCC is responsible for convincing the Commission that the failure of the original payphone compensation regime was due to the lack of clarity as to whether the SBR or Intermediate Carrier was responsible for payphone compensation, and Intermediate Carriers' unwillingness to identify their SBRs or report the amount of traffic sent to each SBR by toll free number.³¹ As discussed above, and acknowledged by RPC,³² the new rules have extensive and explicit reporting requirements that will allow PSPs to identify every SBR, the amount of traffic sent to each toll-free number leased by each SBR from every Intermediate Carrier, and identify a contact a person responsible for payphone compensation for each SBR.

²⁹ *Id.*, & 44.

³⁰ *RPC Petition* at 8.

³¹ *See, Second Reconsideration Order*, & 8.

³² *RPC Petition* at 7.

APCC disputes the Commission's belief that the new reporting requirements will allow PSPs to identify SBRs. It claims that, as in the first rules, the Intermediate Carrier will identify an SBR as a Completing Carrier, and the SBR will identify itself as a non-Completing Carrier.³³ APCC misunderstands the new rules. The new rules do not contemplate a complete absence of disputes, as APCC seems to expect. The new rules actually contemplate disputes and then specifically require Completing Carriers to "implement procedures and controls needed to resolve payphone compensation disputes."³⁴ These procedures and controls should be sufficient to address the concern APCC has raised herein.

B. The New Regime Substantially Improves Upon The Second Payphone Compensation Regime

RPC first cites difficulties associated with the implementation of interim-intermediate period true-ups as proof that PSPs will be massively under-compensated in the new regime.³⁵ These examples are inapposite. Not only do they involve complicated true-ups covering many years of compensation, involving different compensation rates, they also involve time periods during which SBRs did not have verified tracking and compensation systems. Going forward compensation will occur one quarter at a time. There is no reason to expect the experience of the interim-intermediate period true-ups to be replicated under the new regime.

APCC and RPC next argue that there will be hundreds of SBRs, who will shirk their compensation obligations and that the cost of pursuing what they expect will be relatively small

³³ *APCC Petition* at 6.

³⁴ 47 C.F.R. § 1320(c)(7).

³⁵ *See RPC Petition* at 8.

claims; will not justify the enforcement and legal recovery costs.³⁶ Both RPC and APCC presume that the bulk of the scofflaws will be the small SBRs who will find it too expensive to invest in the development and then verification of accurate payphone compensation tracking systems.³⁷ They contend that since these small SBRs will not invest in compensation tracking systems, they will not be qualified to pay compensation at all, and will avoid compensating PSPs altogether.³⁸

The *Data Reliability Order* attempts to reproduce one element of the second regime. Under that regime Intermediate Carriers negotiated agreements with mostly small SBRs to compensate PSPs according to the answer supervision messages they received when they passed coinless payphone calls to SBR platforms. AT&T and MCI document that between 40-50 percent of their SBRs agreed to compensate PSPs for all calls sent to their platforms rather than report completed calls to Intermediate Carriers.³⁹ The Commission clearly hopes such arrangements will continue under the new regime for those SBRs who find it too expensive to invest in the development and then verification of accurate payphone compensation tracking systems.

“By adopting rules that require SBRs to develop tracking systems, we do not intend here to nullify current or future contractual arrangements if the parties wish to continue them. For example, a PSP and a SBR may agree by contract that the SBR may rely upon the interexchange carrier to track data and compensate the PSP directly in exchange for SBR payment for all calls that pass to the SBR’s platform, completed or otherwise. Accordingly, we permit SBRs to rely upon any

³⁶ *RPC Petition at 9, APCC Petition at 6-7*

³⁷ *APCC Petition at 6; RPC Petition at 9*

³⁸ *APCC Petition at 5.*

³⁹ *Data Reliability Order, fn. 136.*

current or future contractual arrangements they may have with interexchange carriers or PSPs provided the PSP concurs.”⁴⁰

MCI shares the Commission’s hope. It expects that nearly all of its current SBR customers who have opted to have MCI compensate on the basis of 100 percent of calls delivered to their platform will desire to continue this arrangement. According to the language in the *Order* however, PSPs would need to grant consent in order to allow these arrangements to continue. Clearly, requiring PSPs to approve these arrangements through explicit contracts would impose significant negotiating costs on all parties. For this reason, MCI strongly supports AT&T’s petition to clarify that if an Intermediate Carrier acts as a conduit between SBRs and PSPs, and compensates PSPs on the basis of all calls sent to a consenting SBR’s platform, such an arrangement would constitute fair compensation to PSPs and from SBRs. Explicit PSP approval would not be required under these circumstances. By so clarifying, the Commission would improve the administrative efficiency of the existing regime, and remove the primary reason PSPs believe the current regime will under-compensate them.

The difficulties Intermediate Carriers described with SBRs under the second regime was with SBRs who believed they had reliable compensation and tracking systems, insisted on supplying call completion data to Intermediate Carriers, but failed to do so in a timely and reliable manner. MCI identified that 39% of its SBRs fell into this category,⁴¹ but also stated its belief that much of the difficulty resulted from its need to receive monthly, rather than quarterly,

⁴⁰*Id.*, & 48.

⁴¹ Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, RBOC/GTE/SNET Payphone Coalition Petition for Clarification, NSD File No. L-99-34, WorldCom Comments, filed June 23, 2003, at 25.

call completion data, in order to integrate SBR data with its billing systems.⁴² MCI believes most of these SBRs will receive independent verification of the accuracy of their payphone compensation systems. These SBRs are generally among the largest SBRs, and so would have strong incentives to verify the accuracy of their compensation systems. Moreover, since the new verification requirements are so substantial and do require the expenditure of revenues and commitment of significant resources, only those SBRs committed to establishing and maintaining the accuracy of their compensation systems will risk both the substantial revenues involved in retaining a firm to attest to the accuracy of their compensation systems, and the additional payments they will most likely make if they fail the attestation and are not permitted to compensate on the basis of per-call completion data.

In the event members of this group of SBRs are not certified as having accurate compensation systems, they will be required to compensate PSPs on some basis other than their per-call completion data.⁴³ In the event they do not approach PSPs to negotiate payments, they will be readily identifiable from information supplied by Intermediate Carriers, and will have large payouts that would justify PSPs pursuit of enforcement or legal remedies. They would also be less likely to close down and operate under a new name than small SBRs, for being among the larger and established SBRs, they would lose their substantial and established base of customers.

⁴² Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, RBOC/GTE/SNET Payphone Coalition Petition for Clarification, NSD File No. L-99-34, WorldCom Reply Comments, filed July 3, 2003, at 7.

⁴³ 47 C.F.R. § 64.1320(a).

IV. THE COMMISSION SUPPLIED SUBSTANTIAL POLICY AND LEGAL JUSTIFICATION FOR THE NEW REGIME.

A. The Commission Has Always Presumed That Compensation Responsibility Defaults To The Carrier Directly Offering The Dial Around Service

RPC maintains that the "...Commission's determination that SBRs are the 'primary economic beneficiary' of calls is purely arbitrary," and argues that Intermediate Carriers also benefit from calls passed to SBRs for completion. As discussed above, the primary economic beneficiary analysis is taken from an earlier analysis that attributed payphone compensation responsibility to the carrier *directly* offering the dial-around service. Placing compensation liability on the party that is the direct beneficiary, as described in the pre-1996 compensation regime, closely tracks actual marketplace practice where the party offering the service to end-users is responsible for compensating all input suppliers.

The Commission has at times shifted compensation responsibility away from its default presumption, but contrary to RPC who maintains that payment responsibility has always depended "exclusively on considerations of administratability," in fact, the Commission has shifted compensation responsibility primarily based on considerations of trackability.⁴⁴ Thus, in its First Payphone Order, it required "*...the underlying facilities-based carrier ... to pay compensation to the PSP in lieu of a non-facilities-based carrier that resells services...Because they do not have their own networks, it would be significantly more burdensome for [non-facilities-based] resellers to track calls from payphones [parentheses added].*"⁴⁵ Moreover, the Commission clarified that so long as the carrier had the ability to track a call to completion it

⁴⁴ RPC Petition at 12.

⁴⁵ First Payphone Order, & 86.

was responsible for payphone compensation, **even if doing so involved significant administrative difficulties.** (“*We continue to believe that it would be significantly burdensome for some parties, namely debit card providers, to track and pay compensation...however...we clarify that a carrier is required to pay compensation...if the carrier maintains its own switching capability...*”).⁴⁶ The Commission maintained its position that SBRs were the primary economic beneficiary in its *Second Reconsideration Order*, even though it shifted compensation responsibility to Intermediate Carriers on the (incorrect) belief that SBRs were unable to track calls to completion.⁴⁷ Trackability, even in the face of administrative difficulties, has been the factor causing the Commission to shift compensation responsibility away from its presumption that compensation responsibility defaults to the direct provider of the dial around service.

B. The Second Compensation Regime Made Intermediate Carriers Liable For Payphone Compensation, But Also Made Them A Collection Agent For SBR Payphone Compensation Payments

RPC states that one of the Commission’s reasons for adopting a new payphone compensation regime was its concern that it was legally suspect to make Intermediate Carriers into the collection agents for another entity’s (in this case SBRs) payment.⁴⁸ RPC argues that the Commission never made Intermediate Carriers responsible for another party’s liability. Rather, the Commission simply made Intermediate Carriers responsible for all payphone compensation.⁴⁹

⁴⁶ *First Reconsideration Order*, & 92.

⁴⁷ *Second Reconsideration Order*, & 16.

⁴⁸ *RPC Petition* at 11.

⁴⁹ *Id.*, at 11.

As discussed above, in its second regime, the Commission contradictorily made Intermediate Carriers liable for all payphone compensation and also made them liable for SBR's compensation payments.⁵⁰ The legally questionable aspect of the second regime was the contradictory requirement making Intermediate Carriers responsible for all payphone compensation and then: limiting the contractual means by which they might recover compensation costs associated with payphone calls passed to their SBR customers; limiting recovery to calls completed by SBRs; and denying Intermediate Carriers other recovery mechanisms when SBRs failed to provide timely call completion data. Under these regulatory-imposed circumstances, the record shows that Intermediate Carriers were often required to over-compensate PSPs and were unable to recover their over-payments.⁵¹ Making Intermediate Carriers both liable for payphone compensation, but limiting their ability to collect their costs based on a role as a simple administrative payment conduit with per-call compensation liability remaining with the SBR, produced rules that would have been found to be arbitrary and capricious.

RPC's argument that Intermediate Carriers were given full reign to negotiate contracts with SBRs, so whatever arrangements were contained in them must have been economically efficient, ignores the distortions to efficient market relations caused by the rules to which RPC wishes to revert.⁵² APCC misses the point by arguing that Intermediate Carriers could prospectively recover any possible overpayments. (*"IXCs are routinely permitted to set*

⁵⁰ *Supra.*, at 3.

⁵¹ *Order*, & 21.

⁵² *RPC Petition* at 14.

prospective rates to recover from some of their customers 'bad debt' associated with other non-paying customers.")⁵³ *"(The Intermediate Carrier presumably has the same opportunity to make a profit on toll free calls that it terminates to a SBR platform as it does on any other toll-free call.)"*⁵⁴ *("...the Intermediate Carrier can recover its compensation payment from the SBR.")*⁵⁵ Because the Commission both shifted SBR compensation liability to Intermediate Carriers, and limited their ability to recover costs associated with this liability when they did not receive call completion data, Intermediate Carriers were not able to recover costs associated with SBR liabilities, and therefore were wrongly required to assume a third parties' liabilities.

V. THE COMMISSION SHOULD RETAIN CLEAR LINES OF COMPENSATION RESPONSIBILITY

A. PSPs Misread The Precondition Language of Section 64.1320(a)

RPC and APCC both ask the Commission to clarify that in the event an SBR does not comply with the attestation requirements, compensation liability reverts to Intermediate Carriers. Both argue that this conclusion follows from Section 64.1320(a) of its amended rules, which states, "[a]s a precondition to tendering payment pursuant to Section 64.1310 all Completing Carriers must undergo a system audit."⁵⁶ However, Section 1320(a) applies to all Completing Carriers, not just SBRs. If the Commission were to affirm RPC and APCC'S interpretation, all Completing Carriers could purposely decline to undergo system attestations and PSPs would not be due any compensation.

⁵³ *APCC Petition* at 13

⁵⁴ *Id.*, at 15.

⁵⁵ *Id.*, at 15.

⁵⁶ *APCC Petition* at 2, *RPC Petition* at 16.

The Commission clearly placed compensation liability on all Completing Carriers, but only allowed those with reliable per-call tracking and compensation systems to compensate according to completed payphone calls as measured by their systems. All other carriers are required to negotiate payments acceptable to PSPs according to some other measure. The Commission suggests one measurement might be the number of calls sent to an SBR's platform by the Intermediate Carrier.⁵⁷

B. Making SBR Liability Contingent On Passing An Audit Would Remove Incentives For SBRs To Develop Reliable Tracking

The Commission should also reject RPC and APCC's request to clarify that SBR liability is contingent on passing an attestation, because doing so would remove incentives for SBRs to develop reliable tracking systems. The purpose of the *Data Reliability Order* is to ensure all Completing Carriers, especially SBRs, have reliable compensation and tracking systems, before being allowed to rely on those systems to make compensation payments. The Commission intended that this requirement would allow SBRs to directly compensate PSPs, which it viewed as the "ideal arrangement," while ensuring PSPs received fair and accurate payments. Accepting RPC and APCC's "clarification" would eliminate this goal, and cause all Completing Carriers, not only SBRs, to avoid compensation obligations.

VI. MISCELLANEOUS REQUESTS

A. The Commission Should Clarify That Completing Carriers Must Report Only Completed Calls

AT&T requests the Commission clarify that Section 64.1310(a)(4)(i) requires Completing Carriers to report a list of toll-free and access numbers dialed *and completed* from

⁵⁷ Order, & 48.

each PSPs payphones.⁵⁸ MCI supports AT&T's request. Without this clarification, PSPs might read this section to require Completing Carriers to provide them a list of all toll-free and access numbers dialed from payphones, even if calls dialed to those numbers were not completed, and even though Section 64.1310(a)(4)(ii) subsequently makes clear that the Commission intended Completing Carriers to only report the volume of completed calls. MCI's payphone compensation system only tracks calls which receive answer supervision messages, either those that complete on its own network, or those that complete to SBR platforms.⁵⁹

Indeed, APCC requests the Commission require Completing Carriers to report on the number of incomplete calls in case a Completing Carrier's payphone compensation system were to erroneously fail to track a completed call.⁶⁰ The Commission should reject APCC's request. The purpose of requiring Completing Carriers to undergo third party verification of the accuracy of their payphone tracking systems is to ensure PSPs that completed calls do not go uncompensated and unreported. Moreover, an aspect of a verified tracking system is the attestation that the Completing Carrier has procedures in place to resolve disputes. These measures should be more than sufficient to ensure that Completing Carriers accurately compensate and report completed calls. APCC's request is unnecessary, excessive, and should be rejected.

⁵⁸ *AT&T Petition* at 3.

⁵⁹ For this reason, MCI is able to comply with the Section 64.1310(c) requirement to report all payphone calls switched to SBRs, calls which may or may not ultimately complete on the SBR network.

⁶⁰ *APCC Petition* at 20.

B. The Commission Should Clarify That Any Responsible Corporate Officer May Certify The Accuracy of Payphone Compensation Payments

Section 64.1310(a) currently requires the chief financial officer of the Completing Carrier to verify the accuracy of quarterly payments made to PSPs. Sprint requests that the Commission reconsider this requirement to require a corporate officer to make this certification.⁶¹ MCI supports Sprint's request. As Sprint explains, there is no additional benefit requiring the chief financial officer, rather than a corporate officer, to make this certification. As written, the requirement is unnecessarily restrictive.

C. MCI Supports Reasonable Reporting Formats Consistent With Current Industry Clearinghouse Practice

APCC requests the Commission require a uniform format to report call data to PSPs.⁶² MCI opposes requiring a single format with which every reporting carrier must comply as being unnecessarily restrictive. Currently, major carriers rely on data formats used by several clearinghouses. These formats are reasonably consistent, but not identical, to each other. The Commission should not require a single reporting format. Formats reasonably consistent with those used by the major clearinghouses should provide sufficient uniformity to PSPs.

D. Retaining Data 18 Months Has Been Sufficient For Seven Years

Under current rules local exchange carriers ("LECs") are required to maintain their verification data to help resolve disputes for 18 months from the close of a compensation period.⁶³ In this *Order*, the Commission has required Completing and Intermediate carriers to

⁶¹ *Sprint Petition* at 2.

⁶² *APCC Petition* at 22.

⁶³ 47 C.F.R. 64.1310(c).

retain their verification data for the same amount of time.⁶⁴ APCC requests the Commission extend this requirement for up to 27 months after the close of a compensation quarter in order to identify and then pursue "...systematic errors or abuses resulting in underpayments.⁶⁵ MCI opposes this request. Intermediate and Compensating Carriers should not be required to retain their verification data longer than LECs. More importantly, the Commission's attestation requirements are designed to identify systematic errors or abuses and prevent per-call compensation in the event such abuses are discovered. There is no need for such lengthy retention of payphone data under these circumstances.

E. Quarterly Reporting of Call Duration Data Is Excessive

APCC requests the Commission reconsider its rules and require beginning time, ending time, and call duration as part of the requirement to maintain call verification data, pursuant to Section 64.1310(g). APCC justifies this request as being necessary to perform its own verification regarding the accuracy of a carrier's call completion system.⁶⁶ MCI opposes this request as excessive. The Commission has already required carriers to have independent, third parties attest to the accuracy of a carrier's completion data, including accurate time and date stamping. The Commission has also required carriers to supply this confirmation report to each PSP. There is no need for additional data to allow yet another party to attest to the accuracy of a carrier's call completion tracking and reporting systems.

⁶⁴ 47 C.F.R. 64.1310(g)

⁶⁵ *APCC Petition* at 19.

⁶⁶ *APCC Petition* at 21.

VII. CONCLUSION

MCI urges the Commission to adopt the positions advocated herein.

Sincerely,

Larry Fenster

Larry Fenster
1133 19th St., NW
Washington, DC 20036
202-736-6513

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on February 10, 2004

Larry Fenster

Larry Fenster

CERTIFICATE OF SERVICE

I, L. Elizabeth Bryant, hereby certify that on this 10th day of February, 2004 copies of the foregoing were served by regular mail or email on the following:

Aaron M. Panner
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, N.W.
Washington, DC 20036

Robert F. Aldrich
Attorneys for the American Public Communications Council
2101 L Street, N.W.
Washington, DC 20037

John E. Benedict
Sprint Corporation
Suite 400
401 Ninth Street, N.W.
Washington, DC 20004

Paul J. Zidlicky
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, DC 20005

Martha Marcus
AT&T
One AT&T Way
Room 3A225
Bedminster, NJ 07921

Qualex International
qualexint@aol.com

L. Elizabeth Bryant
L. Elizabeth Bryant